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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 9, Original

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF LOUISIANA, STATE OF MISSISSIPPI, ET AL.,
Defendants.

MOTION BY THE STATE OF MISSISSIPPI TO CONFINE AND LIMIT THE DECREE ON COUNTER-MOTIONS OF THE UNITED STATES AND THE STATE OF LOUISIANA TO A SETTLEMENT OF THE ISSUES BETWEEN THE UNITED STATES AND THE STATE OF LOUISIANA

and

MEMORANDUM OF THE STATE OF MISSISSIPPI IN SUPPORT OF ITS MOTION

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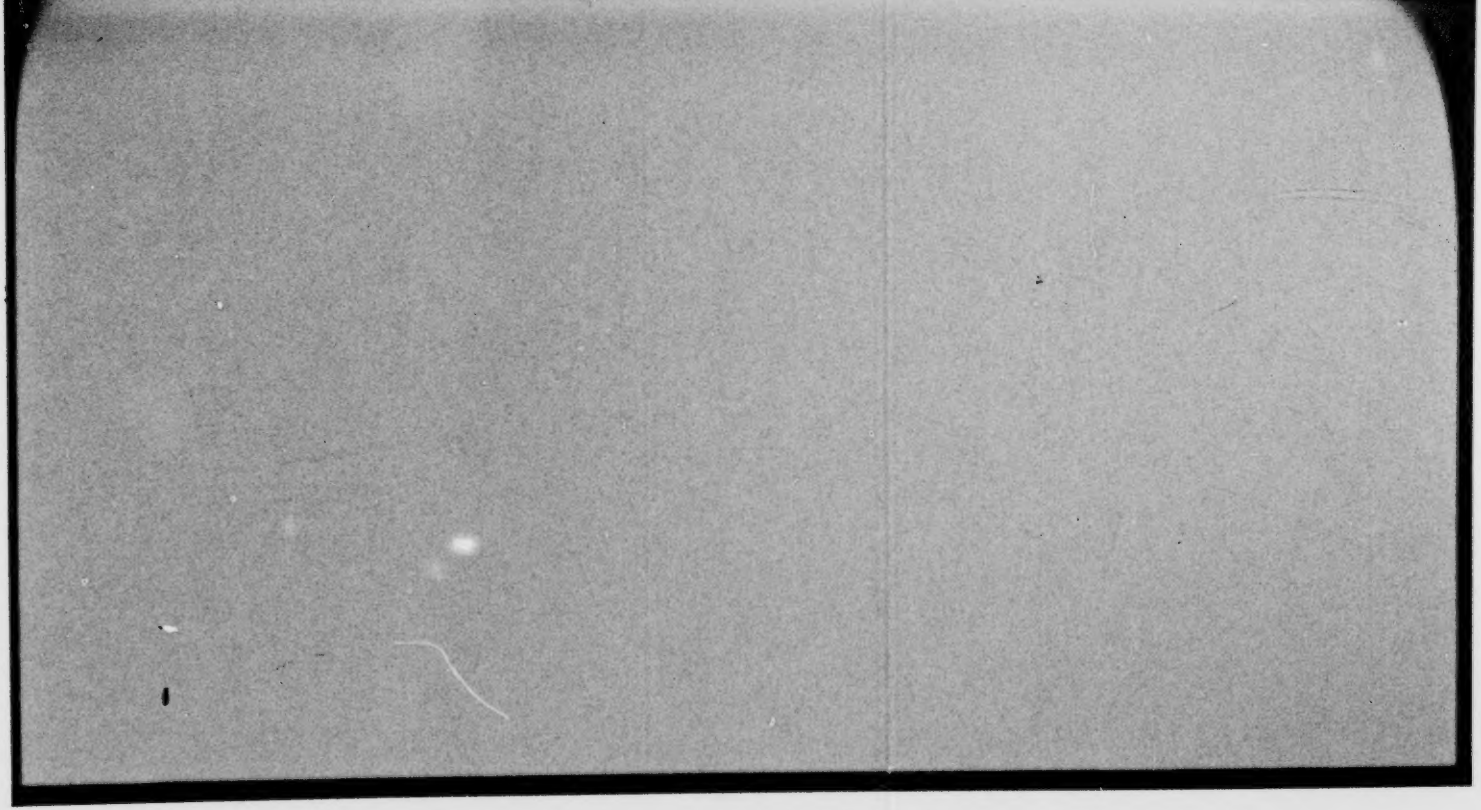

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I

This original action is now pending before the Court on counter-motions for the entry of a second supplemental decree as to the State of Louisiana. Oral argument is to be heard on October 14, 1968.

II

The boundary between the States of Louisiana and Mississippi has been determined by final decree of this Court entered on April 23, 1906, *Louisiana* v. *Mississippi*, 202 U.S. 1, p. 58, and a resolution of the issues between the United States and Louisiana should not extend beyond that boundary into the territory of Mississippi as fixed by that decree.

III

Notwithstanding the fact that the boundary between Louisiana and Mississippi was thus determined by final decree of this Court, the proposed supplemental decree, La. Mo. p. 9, and the alternative proposed supplemental decree, La. Resp. and Opp. p. 73, begin the Louisiana coastline a few miles north of the point where that line extended intersects the proposed line and within Mississippi on fast land. The United States, on the other hand, closed its proposed supplemental decree toward the place on fast land in Mississippi at the point where its proposed coastline meets the boundary between Louisiana and Mississippi, U.S. Mo. p. 36.

IV

The State of Mississippi has been served with pleadings and briefs of the United States and Louisiana in support of their respective motions. Although the captioned litigation has been pending since 1955 and Mississippi was made a party by order of the Court, Mississippi is not properly a party to the limited issue between the United States and the State of Louisiana, except for the protection of the integrity of its territorial boundary with a sister state.

V

Resolution of the present phase of this controversy between Louisiana and the United States can and should be limited to the controversy between Louisiana and the United States without encroachment upon the territory of Mississippi.

VI

In the event this Court finds that the pleadings filed by the United States or by the State of Louisiana, or by the briefs of either, require the participation of Mississippi, to an extent greater than presented herewith, and the Court does not see fit to limit the controversy to the States involved, then these proceedings should be delayed until the State of Mississippi can be fully heard.

Therefore, Mississippi, by and through its Attorney General, respectfully moves the Court to confine and limit its second supplemental decree herein to a resolution and settlement of the boundary dispute between the United States and the State of Louisiana; and that line, as thus established, be decreed to begin or end at a point where said line intersects the boundary between Louisiana and Mississippi, and that the boundary of neither the United States or Louisiana extend to or include any of the territory of the State of Mississippi.

Mississippi moves further that if the Court finds that the issues presently presented on the counter-motions of the United States and the State of Louisiana require further development and participation by the State of Mississippi, that proceedings on said counter-motions be

delayed until Mississippi can be fully heard as to the location of its boundary.

Respectfully submitted,

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The position of Mississippi in this phase of this litigation at this time is not to interfere with, impede or otherwise delay the resolution of the issues presently pending between the United States and the State of Louisiana.

It is the purpose of Mississippi that in the resolution of those issues the Court will include in its decree adequate provisions for the protection of the territorial integrity of Mississippi. It is for the purpose of directing attention to apparent inconsistencies in the proposed decrees with regard to Mississippi and to request formal

action to protect the interest of Mississippi that this motion and memorandum have been filed.

Louisiana's proposed supplemental decree (No. 2) provides that its coastline shall extend:

> From Ship Island Lighthouse to Chandeleur Lighthouse; thence in a curved line following the general trend of the seaward, high-water shore lines of the Chandeleur Islands. . . La. Mo. p. 6.

Louisiana's proposed alternative supplemental decree (No. 2) provides that its coastline is as follows:

> (a) Beginning at a point on the mean low-water line at the easternmost extremity of the westernmost island of the Ship Island couplet, at X=2,759,565.13; Y=571,621.89, Lat. 30°, 13′ N.; Long. 88° 55′ 42″ W., thence along a straight line to the northernmost extremity of the mean low-water line of the Chandeleur Island Chain, at X=2,775,787; Y=513,796, thence in a general southerly direction by successive straight lines along the low-water mark and crossing entrances to inland waters through the points. . . La. Resp. and Opp. p. 73.

The inconsistency of beginning the coastline well within the State of Mississippi and the apparent attempt to limit the coastline to the lateral limits of the State, La. Resp. and Opp. p. 67, is not explained, but is compounded by the various maps submitted by Louisiana as Exhibits 3 and 35. See also the first, second and fourth maps attached to Louisiana Response and Opposition. Louisiana apparently agrees with the United States that its coastline should only be defined within its lateral boundaries, La. Resp. and Opp. pp. 67-68. However, that concession does not change the fact that each of its proposed decrees use Mississippi territory as their point of

beginning, and all of its maps extend the Louisiana coastline beyond its boundary and into Mississippi territory.

Attention of the Court is directed to the fact that, of the two proposed decrees, the final decree of April 23, 1906, *Louisiana* v. *Mississippi*, 202 U.S. 1, p. 58, was not considered. In the two proposed coastlines submitted by Louisiana, both have as their point of beginning fast land within Mississippi several thousand feet north of the point where an extension of the line established by the final decree intersects the proposed coastline.

The proposed decree of the United States terminates:

> . . . northernmost extremity of the mean low-water line on the northernmost of the Chandeleur Islands, at x=2,775,787, y=513,796, latitude 30°03′24.28″N., longitude 88°52′51.25″W., thence northerly along a straight line toward the closest point on the mean low-water line on Ship Island, Mississippi, at x=2,752,565, y=568,525, latitude 30°12′30.80″N., longitude 88°57′02.50″W., to the point where said line meets the boundary between Louisiana and Mississippi. U.S. Mo. p. 36.

This description, while it could be more clear, is not inconsistent with the provisions of the proposed decree providing that the coastline of Louisiana shall be confined to the lateral boundaries of that State, U.S. Mo. 9, 66.

The boundary line established by final decree April 23, 1906, *Louisiana* v. *Mississippi*, supra, appears prominently on the official map of Louisiana 1961 edition. As an exhibit hereto, the line, as thus established, was extended to intersect the line drawn to represent Louisiana's proposed supplemental decree (No. 2) at the point under discussion. The Court will note that the final decree line followed the Cat Island Channel, and, as ex-

tended, intersects Louisiana's proposed coastline approximately equal distance between Ship Island Lighthouse and Chandeleur Lighthouse.

The boundary between Louisiana and Mississippi south of the 31° of north latitude is the Pearl River. *Louisiana* v. *Mississippi*, supra, established the boundary from the mouth of the Pearl River eastward as the Cat Island Channel. The decree entered in that case terminated the boundary for the purposes then under dispute at a point slightly west of the coastlines proposed by Louisiana and the United States.

Where, as here, a navigable river and ship channel forms a boundary separating one state from another, the thalweg or middle of the main navigable channel of that river and ship channel marks the boundary between the states and is to be taken as the true boundary line.

In the Acts of Congress admitting Louisiana and Mississippi as states into the Union, "down the river" was the term used in Louisiana's act of admission and "up the same" was used in Mississippi's act of admission, reference being made to the Pearl River.

Iowa v. *Illinois*, 147 U.S. 1, extensively reviewed the authorities on the subject and held ". . . that the true line in navigable rivers between the states of the Union which separates the jurisdiction of one from the other is the middle of the main channel of the river. Thus, the jurisdiction of each state extends to the tread of the stream, that is, to the 'mid-channel,' and, if there be several channels, to the middle of the principal one, or rather, the one usually followed."

The basis for the foregoing rule of the thalweg has been set forth by Justice Cardozo in the case of *New Jersey* v. *Delaware*, 291 U.S. 361:

> The underlying rationale of the doctrine of the Thalweg is one of equality and justice. 'A river,' in the words of Holmes, J. (New Jersey v. New York, 283 U.S. 336, 342, 75 L. Ed. 1104, 1105, 51 S. Ct. 478), 'is more than an amenity, it is a treasure.' If the dividing line were to be placed in the centre of the stream rather than in the centre of the channel, the whole track of navigation might be thrown within the territory of one state to the exclusion of the other.

In *Iowa* v. *Illinois*, supra, the Court stated:

> When a navigable river constituted the boundary between two independent states, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each state in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is, therefore, laid down in all the recognized treaties on international law of modern times that the middle of the channel of the stream marks the true boundary between the adjoining states up to which each state will on its side exercise jurisdiction. . .

Application of the foregoing rule to the line established by the decree of April 23, 1906, extends the boundary south eastward to intersect the proposed coastline and on into the open sea.

As heretofore stated, the only purpose of Mississippi is to protect its territorial integrity and to ask the Court, in drawing its decree, that it confine the State of Louisiana to within its lateral boundaries and begin or end the coastline as defined by that decree to begin or end at a point where the line is intersected by the boundary between the State of Louisiana and the State of Mississippi.

CONCLUSION

For the foregoing reasons and authorities, it is respectfully submitted that the Court should confine and limit its decree on counter-motions of the United States and the State of Louisiana to a settlement of the issues between the United States and the State of Louisiana.

It is further submitted that said second supplemental decree as to the State of Louisiana should confine Louisiana to its lateral boundaries and begin or end the description as contained in the decree at a point where the coastline between the State of Louisiana and the United States intersects the boundary between the State of Louisiana and the State of Mississippi.

It is further submitted that the filing of this motion and memorandum should not delay a resolution of the issues as presently drawn between Louisiana and the United States.

Respectfully submitted,

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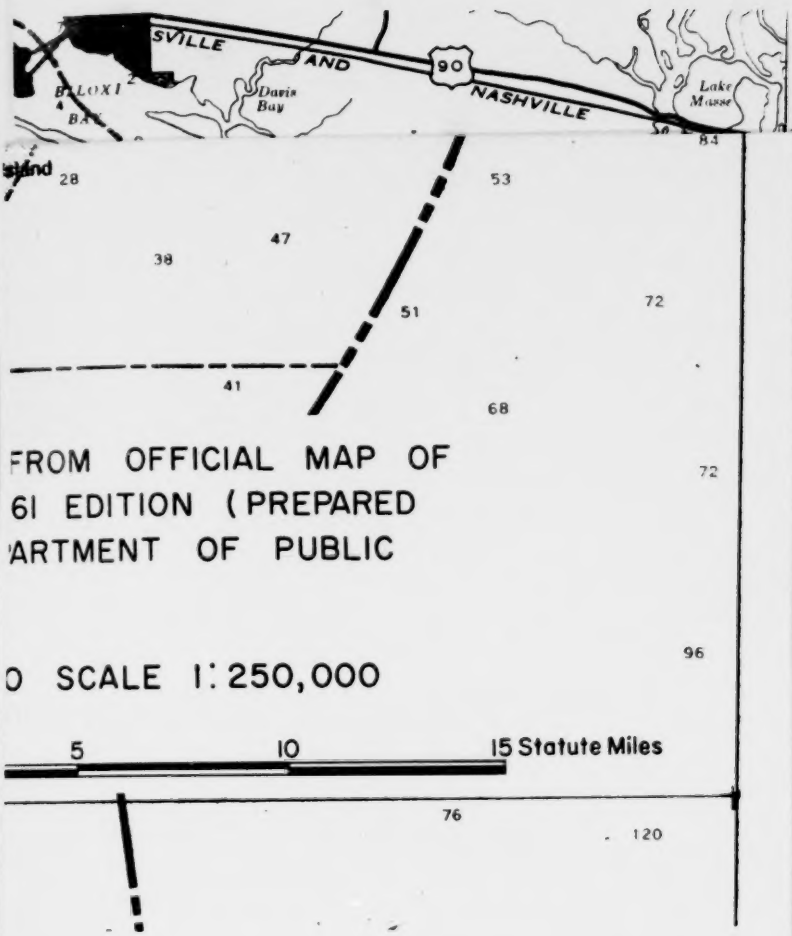

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